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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/274,014	03/22/1999	NICOLAS VOUTE	9676-286	7857

7590 07/02/2003

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3000 K Street, N.W.
Suite 500
Washington, DC 20007-8696

EXAMINER

SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

34

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-34

Advisory Action	Application No.		Applicant(s)	
	09/274,014		VOUTE ET AL.	
	Examiner		Art Unit	
	David L. Sorkin		1723	

--Th MAILING DATE of this communication appears on the cover sheet with the correspondenc address --

THE REPLY FILED 06 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- 1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
- 2. ☐ The proposed amendment(s) will not be entered because:
 - (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

- 3. ☐ Applicant's reply has overcome the following rejection(s): _____.
- 4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see Detailed Action.
- 6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- 7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

- 8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
- 9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
- 10. ☐ Other: _____

DETAILED ACTION

1. Though the communication received 06 June 2003 is titled "Amendment and Request for Reconsideration", no amendment is found therein. The communication has been treated as a request for reconsideration.
2. Applicant argues that "[t]he use of pore volumes ranging from 0.8 to 1.2 cm³/gr of solid material [by Girot '732] marks a fundamental difference between Girot ('732) and the present invention". However, it is explicitly recited in claim 10 of Girot ('732) that 0.2 cm³/gr is within the scope of the Girot ('732). Furthermore, many claims of Girot ('732) are not limited to any particular porosity.
3. The claimed invention of Girot ('732) is not limited to allowing macromolecules to diffuse inside. For example claim 13 of Girot ('732) explicitly recites *excluding* molecules as small as 500 daltons. This would exclude not only all macromolecules, but also smaller molecules down to approximately the tripeptide size.
4. Finally, the instant claims in no way exclude the possibility of macromolecules entering pores. Reciting that percent porosity is less than 30 percent in no way excludes entry of macromolecules. For example a 100 micron diameter bead (total volume ~520,000 cubic microns) could have 1000 radial channels of 1 micron diameter radiating from the center to the surface (having a void volume of ~39 cubic microns each and ~39,000 altogether) and the bead would have a porosity of <8% and the very large macromolecules to enter freely. Clearly the size of a given pore at a surface entrance (if there is one) determines if a molecule can enter, not the percent porosity. A hollow sphere could have >99% porosity and not let anything in. A bead could have a

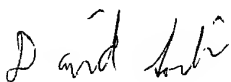
Art Unit: 1723

have a high percentage of very small pores and not let macromolecules in. As seen in Table I of Carr ('373), beads with smaller porosities may in fact have larger pore sizes and therefore allow entry of larger molecules.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 8:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin

June 25, 2003



W. L. WALKER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700